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FRANCHISE & DISTRIBUTION LAW (LAW499H1S)

COURSE MATERIALS & READING LIST

ADJUNCT PROFESSOR: ADAM SHIP

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**FRANCHISE & DISTRIBUTION LAW
(LAW499H1S)**

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A. INTRODUCTION TO FRANCHISE DISTRIBUTION LAW & FRANCHISING AS A BUSINESS MODEL - (January 9, 2014)		
1.	J. Thomas McCarthy, "Franchising" in <i>McCarthy on Trademarks and Unfair Competition</i> (4 th ed.), Vol 3, (Toronto, Thomson Reuters, 2013), at 18(144-9)	2-7
2.	Frank Zaid, "Overview of Franchise Agreements" in <i>Franchise Law</i> (Toronto: Irwin Law, 2005), at 10-23	8-21
3.	Allen Karp, "Franchising Today: A Specialized Contract" (1975) <i>Law Society of Upper Canada Special Lectures</i> 387, at 398-402	22-26
4.	John Stanworth & James Curran, "Colas, Burgers, shakes and Shirkers: Towards a Sociological Model of Franchising in the Market Economy" (1999) 14 <i>Journal of Market Venturing</i> 323, in Frank Hoy & John Stanworth, eds, <i>Franchising An International Perspective</i> (New York: Routledge, 2002), at pp. 22-4, 28-9, 31-2	27-33
5.	James A. Brickley & Frederick H. Dark, "The Choice of Organizational Form: The Case of Franchising" (1987) 18 <i>Journal of Financial Economics</i> 401, 401-5	34-38
6.	Alanson P. Minkler, "Why Firms Franchise: A Search Cost Theory" (1992) 148 <i>Journal of Institutional and Theoretical Economics</i> 240, at 240-7	39-46
7.	Shelby D. Hunt & John R. Nevin, "Power in a Channel of Distribution: Sources and Consequences" (1974) <i>Journal of Marketing Research</i> 186, in Frank Hoy & John Stanworth, eds, <i>Franchising An International Perspective</i> (New York: Routledge, 2002) 103, at 108, 117-8	47-49
B. THE DUTY OF GOOD FAITH AND FAIR DEALING IN FRANCHISE-DISTRIBUTION LAW - (January 16 and 23, 2014)		
1.	<i>Shelanu Inc. v. Print Three Franchising Corp.</i> (2003), 64 O.R. (3d) 533; 226 D.L.R. (4th) 577 (C.A.)	51-63
2.	<i>Country Style Food Services Inc. v. 1304271 Ontario Ltd.</i> (2005) 200 O.A.C. 172 (C.A.)	64-74
3.	<i>Salah v. Timothy's Coffees of the World Inc.</i> , 2010 ONCA 673; 268 O.A.C. 279 (C.A.)	75-81
4.	<i>Fairview Donut Inc. v. TDL Group Corp.</i> , 2012 ONSC 1252, aff'd 2012 ONCA 867	82-136

5.	<i>3574423 Canada Inc. v. Baton Rouge Restaurants Inc.</i> 2013 ONCA 39 (Ont. C.A.)	137-143
C. PRE-CONTRACTUAL MISREPRESENTATION IN FRANCHISING AT COMMON LAW - (January 30, 2014)		
1.	<i>J.R.K. Car Wash Ltd. v. Gulf Canada Ltd.</i> , 46 C.P.R. (3D) 525 (Ont. Gen. Div.)	145-161
2.	<i>Zippy Print Enterprises Ltd. v. Pawliuk</i> (1995), 20 B.L.R. (2d) 170 (B.C.C.A)	162-177
3.	<i>Shelanu Inc. v. Print Three Franchising Corp.</i> (2003), 226 D.L.R. (4th) 577 (C.A.)	178-187
4.	<i>Sultani v. Blenz the Canadian Coffee Company Ltd.</i> , 2005 BCCA 578	188-197
5.	<i>Healy v. Canadian Tire Corp.</i> [2012] O.J. No. 263; 2012 ONSC 77 (Ont. S.C.J.)	198-209
D. FRANCHISE LEGISLATION IN ONTARIO, ALBERTA, MANITOBA, NEW BRUNSWICK & P.E.I. - (February 6 and 13, 2014)		
1.	A. Ship, "Strict Liability and Statutory Rescission of Franchise Agreements in the Ontario Court of Appeal" (2012), 52 <i>Canadian Business Law Journal</i> 288, at 288-92	211-215
2.	<i>Arthur Wishart Act (Franchise Disclosure)</i> , 2000, S.O. 2000, c. 3	216-225
3.	<i>1490664 Ontario Ltd. v. Dig This Garden Retailers Ltd.</i> (2005), 256 D.L.R. (4 th) 451 (Ont. C.A.)	226-235
4.	<i>Hi Hotel Limited Partnership v. Holiday Hospitality Franchising Inc.</i> (2009), 437 A.R. 225 (Alta. C.A.)	236-253
5.	<i>4287975 Canada Inc. v. Imvescor Restaurants Inc.</i> (2009), 305 D.L.R. (4 th) 193 (Ont. C.A.)	254-261
6.	<i>6792341 Canada Inc. v. Dollar It Ltd.</i> (2009), 310 D.L.R. (4 th) 683 (Ont. C.A.)	262-276
7.	<i>405341 Ontario Ltd. v. Midas Canada Inc.</i> , 2010 ONCA 478 (C.A.)	277-290
8.	<i>TA & K Enterprises Inc. v. Suncor Energy Products Inc.</i> , [2011] O.J. No. 4242 (C.A.)	291-296

E. PROTECTION OF THE FRANCHISOR'S BRAND: TRADEMARKS, TRADE SECRETS, BREACH OF CONFIDENCE AND NON-COMPETITION COVENANTS - (February 27 and March 6, 2014)		
1.	Gill, "Licencing under the New s. 50" in <i>Fox on Trade-marks</i> (Toronto, Carswell, 2009) at 15(21-9)	298-308
2.	<i>Boston Pizza International Inc. v. Boston Chicken Inc.</i> , 15 C.P.R. (4 th) 345 (F.C.T.D.); varied 2003 FCA 120	309-318
3.	<i>2 For 1 Subs Ltd. v. Ventresca</i> (2006), 17 B.L.R. (4 th) 179 (Ont. S.C.J.)	319-323
4.	<i>Tank Lining Corp. v. Dunlop Industrial Ltd</i> (1982), 140 D.L.R. (3d) (Ont. C.A.)	324-336
5.	<i>Pet Value Canada Inc. v. 1381114 Ontario Limited</i> , 2013 ONSC 5361	337-340
6.	<i>Cadbury Schweppes Inc. v. FBI Foods Ltd.</i> (1999), 167 D.L.R. (4 th) 577 (S.C.C.)	341-365
F. TERMINATION AND RENEWAL OF FRANCHISE-DISTRIBUTION AGREEMENTS - (March 13, 2014)		
1.	A. Ship, "Common Law Treatment of Renewal Rights in Commercial Agreements: A Special Look at Franchises, Distributorships, and the Duty of Good Faith," (2013) 54 <i>Canadian Business Law Journal</i> 178, at 181-185, 197-202	366-377
2.	J. Lisus & A. Ship, "Restrictions on Unilateral Termination of Franchise Agreements," (2010) 49 <i>Canadian Business Law Journal</i> 113, at 116-8, 121, 123-4	378-383
3.	<i>Shelanu Inc. v. Print Three Franchising Corp.</i> (2003), 226 D.L.R. (4th) 577 (Ont. C.A.)	384-387
4.	<i>1193430 Ontario Inc. v. Boa-Franc Inc.</i> , 78 O.R. (3d) 81; 260 D.L.R. (4th) 659 (C.A.)	388-400
5.	<i>Agribrands Purina Canada Inc. v. Kasamekas</i> , 2011 ONCA 460 (C.A.)	401-405
6.	A. Ship, "Specific Performance of Franchise and Distribution Agreements in Canada," (2012) 39(4) <i>Advocates' Quarterly</i> 407, at 417-21	406-410
G. FRANCHISE SYSTEM CHANGE - (March 20, 2014)		
1.	A. Ship, "Franchise System Change and Managing Legal Risk In-House", (Fall 2013) <i>Canadian Corporate Counsel Association Magazine</i> 48, at 48	412-

2.	<i>Fairview Donut Inc. v. TDL Group Corp.</i> , 2012 ONSC 1252, aff'd 2012 ONCA 867	See B(4)
3.	<i>Landsbridge Auto Corp. v. Midas Canada Inc.</i> (2009), 73 C.P.C. (6th) 10 (Ont. S.C.)	414-432
4.	<i>Bertico Inc. v. Dunkin' Brands Canada Ltd.</i> , 2012 QCCS 2809	433-447
H. VICARIOUS LIABILITY & COMPETITION POLICY IN FRANCHISE-DISTRIBUTION LAW- (March 27 and April 3, 2014)		
Vicarious Liability		
1.	<i>Fraser v. U-Need-A-Cab Ltd.</i> [1985] O.J. No. 2482 (C.A.)	450-451
2.	<i>Percival v. Mayes</i> [1986] O.J. No. 137 (Sup. Ct.), varied [1988] O.J. No. 1569 (C.A.)	452-453
3.	<i>Beuker v. H & R Block Canada Inc.</i> , 2000 SKQB 584, [2011] 10 W.W.R. 274 (Q.B.)	454-458
4.	<i>Toshi Enterprises Ltd. v. Coffee Time Donuts Inc.</i> (2008), 246 O.A.C. 17 (Div. Ct.)	459-462
5.	J. Hoffman & G. Rebane, "Vicarious Liability of Franchisors", <i>Ontario Bar Association</i> (October 14, 2009, 9 th Annual Franchise Law Conference), at 14-7, 24-8	463-471
Competition Law		
1.	<i>Fairview Donut Inc. v. TDL Group Corp.</i> 2012 ONSC 1252	472-489
2.	N. Campbell & S. O'Carroll, "The Americanization of Canada's Competition Act" (2010) 48 <i>Canadian Business Law Journal</i> 446, at 449-51	490-492
3.	A. Roman & J. Morelli, "Drafting Non-Competition Clauses Under the New Competition Act Section 45: Avoidance of a Criminal Offence (2011) 52 <i>Canadian Business Law Journal</i> 95, at 103-108	493-498
4.	Competition Bureau, <i>Enforcement Guidelines - Competitor Collaboration Guidelines</i> (December 23, 2009), at 9-10, 39-40	499-502
5.	<i>Competition Act</i> , RSC 1985, c C-34, s. 76	503-505
6.	F.P. Morrison <i>et al.</i> , "Reasons in <i>Commissioner of Competition v. Visa</i> " (September 17, 2013), <i>Lexology.com</i>	506-509

